



Missouri Department of Natural Resources

Clean Water Commission Water Pollution Control Program

Meeting Minutes

September 10, 2003

MISSOURI CLEAN WATER COMMISSION MEETING
September 10, 2003
Capitol Plaza Hotel, Jefferson City, Missouri

MINUTES

Present

Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
William A. Easley, Jr., Commissioner, Missouri Clean Water Commission
Paul E. Hauser, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Mike Alesandrini, St. Louis RCGA, St. Louis, Missouri
Greg Anderson, Department of Natural Resources, Jefferson City, Missouri
Dorris Bender, City of Independence, Independence, Missouri
Robert Brundage, Mo-Ag, PSF, Princeton, Missouri
Nancy Brunson, Duncan's Point, Edwards, Missouri
William Bryan, Assistant Attorney General, Jefferson City, Missouri
Judith Clark, Department of Natural Resources, Jefferson City, Missouri
Patrick Costello, Region VII EPA, Kansas City, Kansas
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Irene Crawford, Department of Natural Resources, Macon, Missouri
Cheryl Crisler, Region VII EPA, Kansas City, Kansas
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Mohsen Dkhili, Department of Natural Resources, Jefferson City, Missouri
Steve Donatiello, Laclede Gas Company, St. Louis, Missouri
Nonie Dudley, USDA Rural Development, Columbia, Missouri
Scott Dye, Columbia, Missouri
Ted Heisel, Missouri Coalition for the Environment, St. Louis, Missouri
Jason Heldenbrand, Jefferson City, Missouri
Bob Hentges, Missouri Public Utilities Association, Jefferson City, Missouri
Jim Hull, Director of Staff, Missouri Clean Water Commission
James Kennedy, Upland Wings, St. Louis, Missouri
Malinda King, Department of Natural Resources, Jefferson City, Missouri
Angel Kruzen, Water Sentinel-Sierra Club, Mt. View, Missouri
Mary Lappin, Kansas City Water Services Department, Kansas City, Missouri
Ken Midkiff, Sierra Club, Columbia, Missouri
Richard Laux, Department of Natural Resources, Jefferson City, Missouri
Donald R. Liebel, Ionia, Missouri
Ken Midkiff, Sierra Club, Columbia, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Leland Neher, Department of Natural Resources, Jefferson City, Missouri
Andrew Novinger, Village of Diggins, Springfield, Missouri

Kevin Perry, REGFORM, Jefferson City, Missouri
Charles Raab, City of Kansas City, Kansas City, Missouri
Amy Randles, Assistant Attorney General, Jefferson City, Missouri
Joy Reven, Department of Natural Resources, Jefferson City, Missouri
Kris Ricketts, Department of Natural Resources, Jefferson City, Missouri
Ted Salveter, City Utilities, Springfield, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
William Smart, Village of Ionia, Ionia, Missouri
Harold Steffens, Village of Ionia, Ionia, Missouri
Royan Teter, Region VII EPA, Kansas City, Kansas
Scott Totten, Department of Natural Resources, Jefferson City, Missouri
Scott Vogler, MECO Engineering, Jefferson City, Missouri
Diane Waidelich, Secretary, Missouri Clean Water Commission

Vice Chairman Minton called the meeting to order at approximately 9:10 a.m. and introduced Commissioners Perry, Kelly, Easley and Hauser. Commissioner Greene and Chairman Herrmann were absent.

Mr. Hull introduced Amy Randles as counsel to the Commission replacing Deborah Neff who has taken the position of Chief Hearings Officer for the Personnel Advisory Board.

Mr. Hull reported on the retirement of Randy Clarkson, Don Modesitt, and Ogle Hopkins from the Water Pollution Control Program. Resolutions were signed by the commission recognizing Ms. Neff, Mr. Clarkson, Mr. Modesitt, and Mr. Hopkins for their service to the commission and the state.

Vice-Chairman Minton added his appreciation for the efforts of these staff.

Administrative Matters

Final Action on Proposed Amendment to 10 CSR 20-6.010 Construction and Operating Permits

Phil Schroeder, Chief of the Water Pollution Control Program Permits Section, reported the proposed amendment to 10 CSR 20-6.010 creates a new option for permitting wastewater discharges from hydrostatic testing from new petroleum pipelines and storage tanks. The public comment period ran from June 16, 2003 to August 13, 2003. The public also had an opportunity to comment at the July 30, 2003 public hearing before the commission. Mr. Schroeder summarized the comments received on the proposed amendment and staff responses.

A request was made to include, as a new Section 15, discharges from bioremediation projects under this rule. The drafting of section 15 was not finished at the time section 14 appeared in the Missouri Register for public review and comment. An individual who read the register would have no way of knowing at the time of publication that section 15 might be added or what it might contain. Section 15 will have to be included into a future rulemaking in order to provide adequate public review and comment on its wording. No changes were suggested to the proposed amendment based on this comment.

The proposed amendment did not clearly explain the process for public review and comment on the approval for each discharge event under the permit by rule approach. Another person wrote that the proposed amendment did provide adequate public participation in that the general permit, from which the rule was drafted from, was reviewed by the public when the general permit was developed. The department intended to follow the same procedures for public participation used for developing general permits. Most permits are issued on a five-year cycle and, if to be continued, are reopened to public review and comment when rewritten. To ensure that each permit by rule is open for the same periodic review by the public, the department proposed new language in the proposed amendment at section (14) that states that the department shall petition the Clean Water Commission to reopen this rule for public review and comment on a five year interval.

The proposed amendment might inhibit the public's right to appeal the decisions that allow discharges under this proposed amendment. The permit by rule would parallel the general permit process whereby the governing language would be open to public review and appeal on a five year cycle, but that each individual discharge event would not be subject to an appeal. All actions of the department, whether announced or automatic, are open to appeal. Because the proposed amendment does not require written approval to discharge under this rule, a permit is "issued" to a discharger upon the discharger's announcement to the department of their intent to discharge under the terms of this permit by rule. The department shall maintain records open to the public on all persons claiming coverage under permit by rule. Appeals of permits in accordance with 10 CSR 20-6.020(6) may be received by the department up to thirty (30) days from the date the department received notice from the discharger. Language was proposed to be added to the rule at section (14) to clarify the opportunity for appeals.

The proposed amendment may lessen the permittee's accountability for monitoring and reporting their discharges and may make this information less available for public review. The monitoring frequency and reporting requirements for discharges under this proposed permit by rule are the same as contained in the general permit. All discharges are to be sampled and analyzed, and the results submitted to the department annually. All analytical results are kept within the department's records and are available for public review. Dischargers violating the terms of the permit by rule would be in violation of both a rule and a permit, and will be required to promptly resolve the noncompliance. It was recommended that no changes be made to the proposed amendment as a result of this comment.

The proposed amendment is too vague on the requirements for reporting, making this requirement difficult to enforce. For example, Sections 4 through 6 specify that the permittee must sample and analyze each discharge event and report any noncompliant results within five days of receiving them; however, there is no time frame defined which will specify when the permittee must complete the lab analysis. A request was made that a reasonable time frame be established for the analysis of samples. The quality of monitoring data be assured through normal enforcement of sampling requirements required by rule at 10 CSR 20-7.015. The existing rules at 10 CSR 20-7.015(9)(A) require all permittees to follow prescribed methods for sampling and analysis. These methods require that sample handling be performed in a manner that preserves the integrity and representative quality of the sample result. A reference to this existing rule has been added to the proposed amendment.

The de minimus exemption in the proposed amendment for discharges less than 1000 gallons will be easily abused and will result in completely unregulated discharges. Another person stated that there was a practical lower limit below which discharge sample collection, analysis, and reporting is simply not justified. Most discharges are to open lots and not directly into streams. The exemption for monitoring and/or sampling of a discharge is often provided in general permits where the discharge is not likely to exceed water quality standards. A single discharge of short duration of hydrostatic test water at volumes less than 1000 gallons poses minimal threat or potential harm to the environment. The only contaminants of significant concern are pH and chlorine when a potable water source is used. These pollutants will either dissipate or neutralize quickly at low volumes. Chronic affects are more likely if a discharge with high constituent levels were to be sustained in the stream for several hours. However, test water of 1000 gallons or less will generally not dominate a stream and the pH and chlorine will likely dissipate or neutralize before chronic effects occur. No changes to the proposed amendment were suggested.

The limit on pH in the proposed amendment is overly restrictive for discharges resulting from hydrostatic tests that use potable water sources. The pH limits should apply only to discharges from tests using nonpotable water sources and recommended that Subsection (C) of Section (14) of this proposed amendment should be revised to read: "pH equal to or between 6.0 and 9.5 standard pH units whenever a non-potable water supply is used as the water source for the hydrotest". This suggested new language would eliminate a pH limit for discharges using a potable water source. Discharges with a pH of above 9.0 standard units and a volume of more than 1000 gallons pose a significant potential for toxic effects if the discharge causes the pH in the receiving stream to rise above 9.0 standard units for an extended period. The proposed amendment allows for some neutralization (.5 pH unit) to occur. An allowance beyond that might expose some smaller streams to the toxic effects associated with high alkalinity. Since potable water supplies often have a pH above 9.5 standard units, the proposed amendment appropriately establishes a limit on pH for those discharges. Mr. Schroeder explained staff has looked at two other options that would protect the environment. The first option for those that discharge a pH above 9.5, is if the discharger could land apply all of the hydrostatic test water to the extent that it would not discharge into the waters of the state. The second option is if they are near the bigger rivers and can

discharge directly into those rivers, staff feels that a discharge of a pH between 9.5 and 10 would still be protective of waters of the state. Language was proposed for addition to the proposed amendment reflecting this.

Mr. Schroeder asked the commission to approve the proposed amendment to 10 CSR 20-6.010 with changes as he described.

Commissioner Perry commended staff on developing language that she believes will work for everyone.

Commissioner Perry moved to approve the proposed amendment to 10 CSR 20-6.010.

Vice Chairman Minton asked if paragraphs (14)(A)8. and 9. were to be included in the approval.

Commissioner Perry withdrew her motion. Commissioner Easley withdrew his second.

Commissioner Perry moved to **approve the Order of Rulemaking to 10 CSR 20-6.010** as stated and amended; seconded by Commissioner Easley and unanimously passed.

Adoption of July 30, 2003 Commission Meeting Minutes

Commissioner Perry moved to **approve the July 30, 2003 meeting minutes as submitted by staff**; seconded by Commissioner Hauser and passed with Commissioner Minton abstaining.

Grant Increase Request for the Village of Diggins

Ann Crawford, Acting Chief of the Water Pollution Control Program Financial Services Section, reported the Village of Diggins is listed on the Hardship Grant loan fundable list. She explained these loans are somewhat different in that there is not a set percentage of grant amount that can be given to them. Two percent of the median household income is what is set as the user rate. Grants are given in order to meet that requirement. Ms. Crawford stated staff works with other granting and loaning agencies in an attempt to get funding available and meet the goal of the two percent of the median household income user rates. Staff was not able to fully fund Diggins on the first request because of the cash only basis that staff was told to operate on. Some interest has been accrued and several requests have been received because of this. Ms. Crawford explained Community Development Block Grants can provide the maximum grant of \$500,000 and Rural Development can make available another \$500,000. Ms. Crawford requested commission consideration of giving an additional \$500,000 from the interest earnings to complete the funding package. The project includes

phosphorus removal as well as collection and a recirculating sand filter. Ms. Crawford explained phosphorus removal is expensive and the community was not a recipient of phosphorus money.

Commissioner Perry asked if this action would affect those on the contingency list and if the project could be completed without the funds.

Ms. Crawford replied the contingency list would be affected but the Diggins project cannot be completed without the \$500,000.

Commissioner Perry asked what caused the increase in cost.

Andy Novinger, consultant for the Village of Diggins, replied having to serve areas that are not closely clustered and having to do the advanced treatment for phosphorus removal lead to this.

Ms. Crawford stated staff was initially unable to fund this project because of the cash only basis. There is now more money due to the interest being accrued.

Commissioner Easley moved to **approve the \$500,000 grant increase to the Village of Diggins**; seconded by Commissioner Kelly and unanimously passed.

Move Village of Ionia to the Hardship Grant Fundable List

Ms. Crawford stated there was a recovery of funds on a project which makes more money available. The Village of Ionia is next on the contingency list and has been proceeding with its project. Ms. Crawford stated staff would like to fund the project for \$580,400.

Commissioner Perry moved to **approve the staff recommendation regarding the Village of Ionia**; seconded by Commissioner Kelly and unanimously passed.

Lewistown Small Borrower Loan Application

Ms. Crawford reported Lewistown is proceeding with its project but sufficient funds were not available to close the lagoons and extend collection to some locations. The community asked for a Small Borrower Loan which will be repaid. Ms. Crawford stated the money is available and there are presently no other applications. Providing \$84,000 to Lewistown would leave approximately \$150,000 in the fund. Ms. Crawford noted these loans are used in cases of deficits such as this that don't go over \$100,000. She requested Lewistown be funded for a loan in the amount of \$84,000.

Commissioner Easley asked how long the community has to repay the loan, what the interest rate is and whether or not it is a fixed rate.

Ms. Crawford replied it is a 20-year loan at around 1.8 percent at a fixed rate depending on the market at the time of pricing.

Commissioner Perry asked if this will impact Blairstown.

Ms. Crawford replied it will not.

Commissioner Easley moved to **approve the application for a Small Borrower Loan in the amount of \$84,000 to Lewistown**; seconded by Commissioner Kelly and unanimously passed.

Ms. Crawford reported the City of Blairstown, which falls under Ionia on the Hardship Grant list, has submitted a letter to the commission requesting funds that might become available. She explained there are no funds presently available so no action is requested of the commission at this time.

Commissioner Perry asked if they need the entire \$831,000 to proceed.

Ms. Crawford explained that is correct at this time and staff is working with other agencies to try to obtain sufficient funds.

Responding to Commissioner Easley's questions, Ms. Crawford stated \$150,000 is the balance that can be used for several different types of grant programs.

Commissioner Perry asked if more money is expected for this fund.

Ms. Crawford replied that selling more bonds in the near future is not being looked upon favorably. These are all state funds with water pollution bonds that have been voted but they are retired by general revenue which is where the deficit exists in the state budget.

Commissioner Easley asked if there are other loans outstanding that are paying interest that will go back into this fund.

Ms. Crawford replied there are some monies coming back into the State Revolving Fund. There are a few state grants that come back into the Hardship Grant that could be loaned out as state grants. Ms. Crawford noted Hardship Grants are state money and the State Revolving Fund is federal money. No grants can be given out of the State Revolving Fund; only loans.

Upland Wings Variance Request

Richard Laux, Water Pollution Control Program Permits Section, reported staff received a revised application for a variance from Upland Wings in March 2003 regarding the former Pea Ridge Iron Ore Mine. The variance was requested from 10 CSR 20-7.015 as follows: "An impoundment designed for or used as a disposal site for tailings or sediment from a mine or mill shall be considered a wastewater treatment device and not a lake or reservoir." The application indicates that the tailings impoundment at this former mine/mill is now used for recreational fishing and waterfowl hunting. The application projects costs of greater than \$312 million to remove and dispose of the tailings within the impoundment.

Staff formed a committee in April and investigated the request and has the following observations:

- Discussion with the Hazardous Waste Program found that the tailings are not a hazardous waste, but they do contain minor amounts of toxic metals and contain other pollutants such as sulfates and chlorides.
- Recent measurements of the receiving streams last year, Mary's Creek and L. Courtois Creek, appear to indicate sulfate plus chloride values above stream standards and therefore the streams are being considered for inclusion on the next revision of the "303d" list. This site is the only permitted source of these pollutants in the area known to staff.
- The site/owner has not submitted a closure plan under 10 CSR 20-6.010(12), nor received closure status from the Land Reclamation Program which regulates metallic minerals. The department is communicating with the company about the requirements for closure and a significant amount of additional information is needed before a plan can be approved.
- Staff would not expect removal and disposal of the tailings elsewhere to be cost effective, and the application does not address other alternatives such as "in place" closure by capping or otherwise isolating the waste materials from waters moving across or through the site or the impoundment areas on the site. Staff does not believe that the company has adequately addressed the potential for subsurface water contamination.
- The program was contacted several times to lend support to a request the company had in front of the Land Reclamation Program to release some of the bond monies on this site. The program did indicate that if the money was to be used for remediation of the site, staff had no problems with the money being returned.

Mr. Laux recommended denial of the request due to the concerns about potential impacts from discharges on the site. The part of the statute that allows variances indicates that no variance shall be granted where the effect of a variance will permit the continuance of a condition which may unreasonably cause or contribute to adverse health effects upon humans or upon fish or other aquatic life or upon game or other wildlife. Staff recommended the company continue to work towards some sort of a closure plan to be submitted to staff to eventually eliminate this as a wastewater treatment device.

The Water Pollution Control Program has already corresponded with the Land Reclamation Program regarding the applicant's concern about not being able to use their bond money in their active reclamation. Staff will continue to support any activities that lead toward adequate and proper closure of the site.

Jim Kennedy, owner and operator of Upland Wings, informed the commission the former Pea Ridge Iron Ore Mine was acquired about 18 months ago and a tremendous amount of reclamation activity has been done. A closure plan is being pursued through the Metallic Minerals Waste Management Act. Mr. Kennedy stated he would prefer a continuance of the variance rather than a denial. It is believed the chloride and sulfide problems can be contained. The tailings dam has had a leak for quite some time which Mr. Kennedy believes has been located. A remedy will be applied during the next 30 days after which it should be known if the leak has been fixed after another 30 days. If the leak is closed, that will stop the leaching of water which travels through material which is believed to be contributing to the contamination. Based on the engineering for this lake and its drainage, it would be extremely rare if there was any discharge from the impoundment area. If there was a discharge, it would be in concurrence with a major flood event. Mr. Kennedy asked for additional time to see if the problem can be eliminated at which time the closure plan could be addressed.

Commissioner Easley asked how many acres are involved.

Mr. Kennedy replied this is a 180 acre tailings basin. The impoundment structure is at the end of that with two other settlement ponds below that. All the problems are coming from the main tailings area where the crushed cob rock and host material have various elements that are contributing as they are exposed to water and oxygen.

Commissioner Perry asked for an explanation of why the variance is needed.

Mr. Kennedy stated a variance was initially applied for before it was decided that a closure plan is needed. Nothing can be accomplished until the leak is fixed.

Commissioner Perry asked if the closure plan would be completed.

Mr. Kennedy replied unless the variance process makes this area a lake rather than a wastewater treatment area, the closure plan will be completed. He noted he just took this project over a few days ago.

Commissioner Minton asked how many acre-feet of water are in this area at full pool.

Mr. Kennedy replied what will eventually be a lake will be about 110 acres but the entire area legally would be classified as water so that would be 180 acres. The drainage is about 3.5:1 into the area so it wouldn't maintain its maximum pool throughout the summer and wouldn't actually discharge except during flood events.

Commissioner Minton asked how much capacity there is to hold a flood event.

Mr. Kennedy replied it was a covered culvert designed for 100-year flood events. He continued that the 3.5:1 drainage area is not sufficient for a farm pond or anything of that nature.

Commissioner Perry asked if the area is currently being used for fishing.

Mr. Kennedy replied it is a very healthy body of water being used as a sport fishing lake that was sampled by a fisheries expert from Texas.

Commissioner Perry asked if the fish have high iron levels.

Mr. Kennedy replied they don't show anything significant or harmful. He stated there is iron in the tailings but most of it has been removed and there are no significant heavy metals.

Commissioner Perry asked if granting or not granting the variance will have any effect on the activities in the area.

Mr. Kennedy stated the project will be completed.

Commissioner Perry noted the closure plan will be completed and fishing is already occurring. She asked why the variance is necessary.

Mr. Kennedy stated initially the variance would have helped in terms of monitoring and cost but the 303(d) issue had not surfaced at that time. The preferable outcome would be for the commission not to do anything for 60 days which would allow more time to get a handle on the water issue.

Commissioner Perry noted if no action is taken there is no variance and the site is under the requirements of the closure.

Mr. Kennedy noted that is correct and he could proceed either way depending on whether or not the leak is fixed.

Commissioner Perry stated the variance may be needed in 60 days.

Mr. Kennedy stated it might be working in 60 days. If the Metallic Minerals closure plan will take two years, then he wants a variance.

Mr. Laux stated this is a unique situation and staff's recommendation is to take an action of denial today but possibly credit Upland Wings for the application fee if resubmittal of the application occurs. Denial would close out this application that does not have new

information. Mr. Laux noted staff would be more comfortable with closing out this application and utilizing the application fee for a revised application. He explained the application being discussed today is the second submittal and discussions occurred between the first and second submittal. The process could continue to where an application can be submitted that staff might be able to support.

Responding to Commissioner Perry's question regarding timing, Mr. Laux stated staff has 60 days to investigate a new request and staff would ask for 60 days to look at a revised application if the issue is tabled. This would not slow down a revised request. Mr. Laux noted there has been discussion in the past that if an action is not taken there might be a presumption that the variance has been granted. The statute indicates that once staff makes a recommendation, some action would be taken. Mr. Laux noted several requests have been tabled in the past for fairly long periods to get into discussions and come back with a revised recommendation.

Commissioner Perry moved to **deny the Upland Wings variance request with the understanding that the fee submitted with the first application will be applied if a variance request is resubmitted**; seconded by Commissioner Hauser and unanimously passed.

Water Quality Standards Recommendations

Becky Shannon, Chief of the Water Pollution Control Program Planning Section, reported at the July 30 meeting of the commission there was a request regarding recommendation of water as a classified waterbody.

Mr. Dkhili stated during the July 30 meeting the commission was asked to consider a change in the Water Quality Standards making Willow Branch in Putnam County a classified stream. The commission asked staff to provide a recommendation regarding this issue. Staff had previously received a similar request regarding Kit Creek, and subsequent to the commission meeting received two additional requests dealing with Incline Village Lake and Brush Creek. Staff reviewed all of these requests and developed recommendations.

Mr. Dkhili stated the department currently does not have a formal protocol for assessing and determining waterbody classification. Staff is in the process of developing an assessment protocol that will define the methods and criteria to be used for waterbody classification. Once the protocol is approved, it will be used in cooperation with other agencies to survey streams and classify them according to this protocol.

Willow Branch consists of 0.95 miles mainstem, a 1.85 miles eastern fork and a 1.9 miles western fork in north central Putnam County and is a tributary to North Blackbird Creek, which is a Class "C" stream. Mr. Scott Dye requested to have Willow Branch classified at the July 30, 2003 commission meeting. On August 8, 2003, staff surveyed the mainstem, 0.3

miles of the eastern fork, and 0.5 miles of the western fork of Willow Branch and found pools that supported aquatic macro-invertebrates and minnows. Staff recommendation was that the 0.95 miles mainstem, the 0.3 miles eastern fork and the 0.5 miles western fork of Willow Branch be added to 10 CSR 20-7.031 Table H as a Class "C" stream.

Kit Creek is a 1.6 mile-long stream in northeastern Franklin County and is a tributary to Little Fox Creek, which is listed as a Class "C" stream, 1.48 miles downstream of Kit Creek. In a letter dated November 9, 2001, Mr. Ralph Schlemper (Friends of Fox Creek) requested to have Kit Creek (and consequently the 1.48 miles of Little Fox Creek) classified. Brookside Environmental Services was contracted by Friends of Fox Creek to conduct a macro-invertebrate analysis of Kit Creek on the Schlemper property on August 17, 2001. On October 11, 2001, Larry Pierce (GSRAD), determined that the upper reach of Kit Creek is losing for a length of 2000 feet. Review of data from NOAA for the time period in which the macro-invertebrate and geological assessments of Kit Creek does not indicate that the watershed was experiencing a "dry period" and thus does not fulfill the requirements to be classified as a Class "C" stream. Due to the lack of information concerning aquatic life support during dry periods, staff did not recommend the classification of Kit Creek or Little Fox Creek at this time.

Incline Village Lake covers about 165 acres. It is located in northeast Warren County and northwest St. Charles County and is fed by Indian Camp Creek. In a letter dated February 15, 2001, Mr. Paul M. Jeannot requested that Incline Village Lake be classified as a whole-body-contact recreational lake. A sand beach area for swimming is available along with a marina, a boat ramp, and several private boat docks. Staff recommendation was that Incline Village Lake be added to 10 CSR 20-7.031 Table G as a Class "L3" lake because of existing use.

Brush Creek consists of 5.3 miles in northwest Jackson County and is a tributary to Blue River, which is listed as a class "P" stream. E-mails dated August 15, 2003 and August 25, 2003, from Ms. Cynthia Andre of the Sierra Club and Ms. Debby Hays of the Blue River Watershed Coalition, respectively, requested that Brush Creek be classified. Additional signatures supporting this petition were later received from citizens of the area. Due to the lack of information concerning aquatic life support during dry periods and other uses, staff did not recommend the classification of Brush Creek at this time.

Commissioner Perry asked how this action could be considered anything other than arbitrary and capricious if there is no formal protocol for assessing and determining waterbody classification.

Mr. Dkhili responded the protocol is theoretically not in place but a version of it was used for Willow Branch since the commission directed staff to investigate this request.

Commissioner Perry stated there is a problem if there is no process for making determinations that is open for public review.

Mr. Dkhili replied the Water Quality Standards defines Class C as streams that might cease flowing part of the year but have pools that could support aquatic life.

Commissioner Perry noted there is no protocol for this process and asked if there was something life threatening about this situation if action to classify is not taken before the protocol is developed.

Mr. Dkhili replied classification would protect the stream but he did not believe this is a life threatening issue.

Ms. Shannon stated as staff looked at the request from the last commission meeting, it was brought to the attention of management that while the provisions are in the standards that defines what a classified stream is, there is no methodology to define when a stream has pools. She continued in the case of Willow Branch this particular August was one of the driest on record. Staff felt confident if Willow Branch was supporting aquatic life during this drought period then it was very defensible that it should support aquatic life all the time and meet the requirements in the standards. Ms. Shannon noted staff feels strongly that the protocol needs to be put in place.

Commissioner Kelly asked how other waters became Class C streams without a protocol.

Ms. Shannon replied the recommendations came from scientists within the Department of Natural Resources and Department of Conservation.

Commissioner Perry stated requests for classification are coming in from outside sources and she feels this is opening a pandora's box if it's not done right.

Commissioner Hauser asked when the protocol will be completed.

Ms. Shannon projected early 2004 since a draft has been completed but a peer review has not yet been conducted by sister agencies.

Commissioner Perry noted there is no immediate threat to the environment if the commission waits for this protocol to be developed.

Ms. Shannon stated the draft proposed rulemaking for Water Quality Standards revisions needs to proceed and staff needs to know whether to include these waters in a proposed amendment. She continued, if that does not occur in this round of proposed rulemaking, it could be done in a future rulemaking.

Commissioner Perry stated there will probably be many more proposed for classification than just these four.

Ms. Shannon replied as the protocol is finalized she expects to receive input from many different entities with more waters requested for classification.

Commissioner Perry noted the requests could be included in the second round of rulemaking so that the protocol could be used.

Commissioner Kelly asked what has to be done to make sure these four requests are brought back to the commission.

Ms. Shannon replied the commission can assume staff will add these requests to the list of issues to address during the next rulemaking or take an action to make sure that it comes back before the commission.

Mr. Dkhili asked if Incline Village Lake has to wait for the protocol since it is being used and it is a part of a stream that is already classified.

Commissioner Perry asked why this status is being sought for this lake.

Mr. Dkhili replied the request was made due to the concern that someone will discharge into the lake.

Responding to Commissioner Perry's question, Mr. Dkhili stated the stream on the lake is a Class C stream. The lake was not protected and was not listed.

Ms. Shannon stated the standards would not necessarily apply if someone wanted to discharge into that lake. If this change is made, all of the standards in place to protect the stream would be effective for this lake.

Mr. Laux explained Class C and P streams were classified during drought periods in the 1930s and 1950s and there have not been many added since then. These streams were walked by staff from the Departments of Natural Resources and Conservation. If there were pools with aquatic life in them, they were Class C streams. Many have indicated that flow regimes have changed since the 1950s and that is why staff has begun work on a protocol. Staff has added lakes to the list when they were told of this use and then brought it to the commission in a rulemaking package. There are special lake limits based on technology. If there is a discharge going to a lake now that is not on the list, it does not affect the water quality aspect since staff still has to determine the mixing zone, zone of initial dilution, and apply the appropriate standards. Mr. Laux explained there is a difference with a stream that is not currently classified. Unclassified streams only get acute protection, not chronic protection, under the standards but there should not be a difference in a lake setting with the exception of the technology standard. The water quality analysis would be the same if the lake was on the list as when it isn't on the list. There would be increased costs associated with it.

Commissioner Perry noted the technologies that are available at this time will have to be implemented. She asked if staff anticipates someone discharging to Incline Village.

Mr. Dkhili noted the individual who made this request is fearful of this.

Commissioner Perry asked if the commission taking action today would require that individual to have some sort of filtration system.

Ms. Shannon responded the action today would simply direct staff to add this to the proposed rulemaking which would go through the public comment process and a public hearing before the commission prior to final action being taken.

Commissioner Minton asked if staff has been to Incline Village Lake.

Mr. Mohammadi informed the commission there is current enforcement action against Incline Village. The wastewater treatment facility that is discharging into Incline Village Lake is not in compliance. Missouri American Water Company has filed with the Public Service Commission to purchase the Incline Village wastewater treatment facility.

Commissioner Perry asked if compliance with the standards would be made more difficult by applying technological standards.

Mr. Mohammadi replied the wastewater treatment facility is not in compliance and there is a discharge going into the lake.

Commissioner Perry asked if the level of compliance would be beyond what they currently have to comply with if the lake is classified.

Mr. Mohammadi replied that would not change the limits in the permit that the facility will operate under.

Mr. Laux explained lake limits were applied since it is a lake. When staff is aware of a use that would trigger putting the water on the list at some point, the applicant is told that it is very likely they will have to meet these limits.

Mr. Dkhili noted the request is to classify the lake and also to designate its use as whole-body-contact.

Commissioner Perry asked if deciding what is whole-body-contact is not part of the protocol that is being developed.

Ms. Shannon stated in this case the petitioner has indicated that people are currently using this lake for swimming and they have asked that it be classified and designated for whole-body-contact to protect the existing use. Staff does not know at this time if this discharging

facility disinfects so there might be an additional disinfection requirement. Ms. Shannon explained this request will be added to the proposed rulemaking regardless of action today.

Robert Brundage, Premium Standard Farms, stated at the last meeting Mr. Dye requested that the commission reverse its position opposing EPA's listing of this waterbody segment on the 303(d) List and recommended classifying this stream as an intermittent Class C stream. He explained that Mr. Dye cited some noncompliance with a permit by Premium Standard Farms. Mr. Brundage stated Premium Standard Farms did receive a Notice of Noncompliance from the Corps of Engineers regarding a channel maintenance flow release. Premium Standard Farms agreed to a 24-hour release of water to simulate a flood along with some continuous releases. Premium Standard Farms did not do the channel maintenance flow release. The rainfall in that area has been extremely deficient. The only way to release water from the dams is if there is enough water in the lake to release out the spillway so there was a legitimate reason for not performing this release. Mr. Brundage stated that Mr. Dye had spoken of adding cedar revetments to the stream and it is perplexing why he would request the channel maintenance flow which is designed to scour out the stream and possibly rip out the cedar revetments. He referred to Mr. Dye's statement about seeing the worst algal blooms he's ever seen in the stream since he has been monitoring. Mr. Brundage noted he assumes Mr. Dye is implying that there must be pollution coming from Premium Standard Farms property that is causing algal blooms which is simply not the case. The only opportunity for pollution from the Premium Standard Farms property would be from land application that was done in an irresponsible manner. Mr. Brundage stated he checked on the land application records of Whitetail Farm and it has done no land application of any effluent in the watershed that would flow across Mr. Dye's property. He stated any kind of allegation that Premium Standard Farms is somehow polluting or causing algal blooms on the Dye property has no support whatsoever and possibly Mr. Dye should look closer to home for a source of nutrients on his property. Mr. Brundage reported Premium Standard Farms is also required to continuously release water over the spillway. The Corps of Engineers has granted waivers part of the time during the drought to cease that flow. Mr. Brundage continued over 37,000 gpd, or 1.22 million gallons per month, was being pumped from these lakes in December and January into these streams. This also occurred in July. The permit allows about 35 percent of the previous flows in August. Many or most of the watersheds similar to the one flowing across Mr. Dye's property were bone dry with the lack of rainfall. Mr. Brundage stated Premium Standard Farms is responsible for artificially maintaining quite a bit of flow in the stream on that piece of property during a period of extreme drought. He asked if the commission wants to list a stream based upon a permit condition over artificially creating some aquatic habitat to the benefit of the Dye property. Mr. Brundage continued that a request for modification of that permit will be made to change some of these conditions. The possibility exists that during periods of drought when there is no water in any other watershed in that area, that Premium Standard Farms will not be releasing that kind of water.

Mr. Brundage stated there is no protocol in place and it is problematic for the department to classify streams on an ad hoc basis. He recommended that the commission not proceed with classifying this stream but rather get standards in place for a systematic approach for the entire state. Mr. Brundage also asked that the commission not take action at this time because Premium Standard Farms will be asking for a permit modification.

Scott Dye noted the stream does survive due to releases from Premium Standard Farms' lakes but those lakes were built without permit in 1994 and 1995. After-the-fact permits were issued by the Corps of Engineers which required channel maintenance releases and aquatic maintenance releases. Mr. Dye stated it was rather unprecedented for the Corps of Engineers to do an after-the-fact permit and require a stream, which had been a perennial stream running without interruption prior to the erection of 19 and 22 acre lakes, to be retained as a viable stream. He continued that these are releases required under a 401/404 permit issued by the Corps of Engineers and the west lake at Premium Standard Farms has been full for over two months and could have released water. Mr. Dye stated the water in the west lake came from pumping water out of North Blackbird Creek for almost two months. He continued that the Dye property can also be impacted by one of the two lagoons sitting immediately adjacent to the property line if it collapsed. Mr. Dye stated this property is in a family trust for the Dye family. The aquatic maintenance flows required to keep aquatic life alive in that stream have been waived out and not delivered for the first two quarters of this year due to the drought conditions. Willow Branch begins above the Dye property and goes down almost a mile and a half below the Dye property and would actually be a benefit to the resource rather than to the property. Mr. Dye stated the DNR employee who did the assessment of the stream walked the entire reach of the Dye property but did not go on the Premium Standard Farm property so it was not recommended for classification. He noted it was a thorough, scientific study and he hopes the commission received the report on the assessment. Mr. Dye noted anyone having objections to this request can voice those during the rulemaking process but waiting another 15 months to get this action done seems a bit silly.

Commissioner Perry referenced Mr. Dye's comments during the last meeting regarding the Corps of Engineers and wondered if this is a continuation of that battle. She noted discussion today has focused on looking at a statewide process of stream classification where a scientific approach can be taken for the entire state rather than on a segmented basis.

Mr. Dye replied he approached the commission the last time because the commission chose to oppose EPA's recommendation to list the stream.

Commissioner Perry noted one issue regards lakes permitted by the Corps of Engineers and a second regards the issue of classifying the stream.

Mr. Dye replied he does not see a correlation between the two issues; either a stream supports aquatic life or it does not. The question that needs to be addressed by the commission is whether or not Willow Branch is a Class C stream that supports aquatic life.

Mr. Dye concluded that based on an assessment by the department, it does support aquatic life and always did before the two lakes were built. He thanked the commission for taking the time to address this issue which is quite important to that region of the state.

Commissioner Perry asked where Mr. Dye lives as the minutes initially listed him as coming from Columbia and a later reference refers to Putnam County.

Mr. Dye acknowledged he was raised in Putnam County on the farm being discussed but currently resides in Columbia.

Angel Kruzen, Water Sentinel with the Sierra Club, reported on the history of Brush Creek and requested classification and assignment of an identification number. She continued that, according to Section 101 of the Clean Water Act, the minimal classifications are support aquatic habitat and support primary contact recreation. Ms. Kruzen stated the creek is still being used for recreation today. Much money has been spent on beautifying the creek. The Corps of Engineers has an ongoing improvement project. Mr. Kruzen stated she finds it amazing that the creek doesn't even have an ID number and if nothing else occurs, she would request that a number be assigned.

Commissioner Perry asked if Brush Creek is being artificially flooded to maintain water flow through the Plaza area.

Ms. Kruzen replied she has followed the creek about four miles into Kansas where it goes underground. She stated that local residents believe it comes from an underground spring. It is dammed up into a lake body and further down the bottom has been cemented and it has a little ditch. In some of those areas the water has lifted the cement and you will find the original stone bed. She concluded that older residents say that it has always had water.

Commissioner Perry noted she is somewhat familiar with the creek since she grew up in that area and it has undergone some remarkable changes and is quite scenic. She noted she understands whole-body-contact is not an intended use.

Ms. Kruzen replied pictures show a paddle boat in the creek and she has not been on a bicycle powered boat where a human hasn't gotten splashed. She continued that joggers also get sprayed by the fountain; it's a humanized river that has been conditioned and changed to make it available for humans.

Commissioner Perry noted this would be addressed if a water protocol were in place.

Ms. Kruzen asked if an ID number can be assigned at this time.

Ms. Shannon acknowledged classification is required before an ID number can be assigned.

Commissioner Perry asked if this is not regulated by the City of Kansas City.

Ms. Kruzen replied it is part of the combined sewer overflow so it probably is. She noted the locals refer to it as flush creek.

Commissioner Perry stated one time the entire creek was what is seen in the photos provided by Ms. Kruzen and the city has been working on improvements.

Ms. Kruzen noted the upper regions before the plaza still have the dirt sides and natural bottoms with crawdads and quite a few macroinvertebrates.

Commissioner Perry noted the commission would certainly appreciate input if this could be done more systematically.

Ms. Kruzen noted she has seen people fishing out of this creek and has told them they really don't want to eat these fish.

Commissioner Minton asked if the 5.3 miles for which relief is requested is a part of the photos provided to the commission or downstream.

Ms. Kruzen replied she is requesting relief for the entire length.

Mr. Minton asked how staff could not recognize the opportunity for support of aquatic life if they see a boat in the water.

Ms. Shannon replied staff has not yet done an assessment.

Commissioner Kelly noted she has lived in this area for over 70 years and this creek always has at least a trickle flow. She stated the symphony once held a concert there and billed it symphony in a sewer. Commissioner Kelly noted she does not know how the city has gotten away with that all these years.

Commissioner Perry noted her concern is that a systematic approach is needed.

Mr. Dye noted it does not surprise him that no one from the department would want to defend Brush Creek. He continued that is the only logical reason that a stream that runs through Country Club Plaza, golf courses, and the middle of a major metropolitan area, obviously has lots of human contact with the stream, and has had more than \$100 million worth of landscaping done on it has not been classified. Mr. Dye stated the urban streams cannot be written off as open sewers. This issue should be moved forward by including it expeditiously in a rulemaking where public comments can be heard.

Commissioner Perry noted the commission is looking for a way to make determinations.

Mary Lappin, Kansas City Water Services Department, supports the Department of Natural Resources' position that classifying Brush Creek at this time would be premature. The city will provide a written statement to the commission and staff within the next two weeks to be included in the record.

Commissioner Perry moved to **proceed with great speed and alacrity to develop a formal protocol for assessing and determining waterbody classification and that action be tabled on the streams discussed today until that protocol is developed**; seconded by Commissioner Hauser.

Commissioner Kelly questioned this action causing a delay due to having to wait on the systematic approach.

Commissioner Perry stated she is not suggesting a delay but a process needs to be developed in order to have an even playing field for everyone. If that process is not being followed in a timely manner, the option is available to come to the commission.

Commissioner Kelly stated she does not want the commission to discourage people from coming to them.

Commissioner Perry noted a lot of this would be unnecessary if a protocol existed so that staff had a way classify the streams. She stated she is not trying to imply that people should not make the commission aware of problems.

Commissioner Kelly stated something should be done as soon as the department learns of an issue.

Commissioner Perry stated if a protocol was in effect today, the commission would be able to act upon these requests today.

Commissioner Kelly noted if documentation is provided to staff they should then look into it as soon as possible.

Commissioner Perry noted this motion would then encourage staff to have this process developed as soon as possible. She clarified her motion as proceeding with great speed and alacrity to develop a formal protocol for assessing and determining waterbody classification and to table the action on these streams today until that protocol is developed and that this motion is not meant to discourage people from bringing to the attention of the commission streams and waterbodies that may be impaired.

Commissioner Kelly noted all deliberate speed should also be included when addressing issues brought to the attention of the commission.

Commissioner Perry agreed.

Motion passed unanimously upon roll call vote.

Assessment of Waters for Whole-body-contact – Memorandum of Understanding

Ms. Shannon reported this topic was discussed at the July commission meeting at which time a draft of the Memorandum of Understanding (MOU) was provided and the systematic approach to assessing streams for whole-body-contact was discussed. She reported one change has been requested by EPA to the updated draft of the MOU provided to the commission. The first asterisk would read "Waters unevaluated as of April 2009 will be proposed to have WBC designation." The language "The number of assessments performed is not under the control of the parties of this MOU; therefore, there shall be no consequence associated with a failure to meet these estimated numbers." would be deleted. Ms. Shannon asked for commission direction on this issue.

Commissioner Perry noted a protocol also has to be developed for this and if a stream has not been designated by 2009, they automatically become whole-body-contact.

Ms. Shannon replied any streams not yet evaluated at the end of this period under this MOU would by default be listed for whole-body-contact.

Commissioner Minton asked if it feasible for staff to accomplish this task by 2009.

Ms. Shannon replied it depends on the amount of assistance provided from other entities. She continued that one of the main reasons staff has been working with the Department of Agriculture, who has been very helpful, is so that staff can use this protocol to have the field staff of partner agencies gather some of this information. Ms. Shannon stated the Department of Natural Resources could not do this evaluation with existing resources.

Commissioner Perry asked if the partner agencies have all agreed to this MOU.

Ms. Shannon replied this MOU is between the Departments of Natural Resources and Agriculture and the Environmental Protection Agency. Other partners are in discussions but not obligating to anything at this time.

Commissioner Perry asked if EPA will provide funding for this.

Ms. Shannon replied nothing above the current level of funding.

Commissioner Perry noted this is an additional task and her number one question is where is the funding going to come from. She stated this is a very cumbersome activity that needs to be done but questioned how it can be done quickly, efficiently, and scientifically without funding.

Ms. Shannon replied staff has considered the resource demands that will be required and that is one of the primary reasons staff is hoping to rely on partners who are already in the field and can take a little extra time to look at these issues while completing their normal work.

Responding to Commissioner Perry's questions, Ms. Shannon stated the protocol is still being drafted. The protocol discussed earlier is the scientific methods used to evaluate whether a stream is supporting aquatic life and should therefore be classified. This issue has to do with whether or not a stream can be used for the attainment of whole-body-contact and to document those circumstances in which whole-body-contact cannot be attained. Ms. Shannon explained this is an issue EPA found needed to be changed when the Water Quality Standards were reviewed in 2000.

Commissioner Minton asked who proposed the 2009 timeframe.

Ms. Shannon responded EPA initially proposed the length of time but during discussions the date was negotiated.

Commissioner Perry asked if 3,700 stream segments can be completed in five years.

Ms. Shannon replied she does not know but staff will do their best.

Commissioner Minton noted there are so many outstanding issues that the commission is setting itself up for a monumental task without the necessary resources. In 2009 a lot of streams will be designated for whole-body-contact without the scientific evidence to back it up which is unreasonable.

Commissioner Perry stated there is a big problem since these Water Quality Standards revisions should have been made quite some time ago. This MOU is proposed knowing that staff should have taken action two years ago. The question is can we live with this, but do we have a choice.

Ms. Shannon explained initially staff understood they were to designate all waters as whole-body-contact at this point. As the issue was reviewed, this particular approach was discussed as an alternative to designating all of them in the first phase of rulemaking.

Commissioner Perry noted everyone is familiar with having something designated not based on a systematic approach and then trying to get it undesignated.

Commissioner Minton noted if EPA realizes staff has been working with due diligence and has accomplished a major portion of the task there might be some room for extension of the timeframe.

Commissioner Perry noted the partnership looks like a good idea.

Commissioner Minton commented that is the only way this will happen. The department does not have enough staff to accomplish this.

Mr. Hull stated this is a daunting task and staff does want to use a systematic approach that uses common sense. He continued that since this is a MOU, there is an opportunity to extend the completion date if staff falls somewhat short of meeting the due date.

Commissioner Perry asked how this gets elevated to the highest priority.

Ms. Shannon replied it is one of the top burners for her staff and they will need to work with the partners to elevate it. Some of the agencies were concerned that scientific documentation is needed. Ms. Shannon noted she believes there is motivation but every agency has resource problems.

Commissioner Hauser asked what will happen if this MOU is not approved.

Ms. Shannon responded staff has been working with EPA and the Department of Agriculture but EPA is the driving force behind having a formal MOU. Staff can still proceed in this direction without a formal MOU but the action of EPA is unknown.

Commissioner Perry noted she likes the idea of having something finalized and in writing with everyone on the same page. It should also be a good faith indication of the timelines that have been set for everyone who thinks staff is not moving forward.

Ms. Shannon noted Mr. Midkiff mentioned at the July commission meeting that there is a Notice of Intent to Sue filed against EPA regarding Missouri's Water Quality Standards. She stated EPA has the responsibility for moving forward with promulgating rules for the state if the state fails to do so by a certain time. EPA is also dealing with a Notice of Intent to Sue from the Coalition for the Environment that addresses this issue.

Ms. Crisler, Region VII EPA, stated what happens if the MOU is not implemented is not necessarily within EPA's control; federal promulgation can result. She continued that this deficiency was found three years ago and has not yet been rectified and is a requirement of the Clean Water Act. Ms. Crisler stated EPA has been ordered to move forward and promulgate a rule in Kansas which has been done for about 1,200 waters. She continued that the MOU demonstrates a good faith commitment that Missouri is moving forward but that there is no guarantee even if this MOU is entered into that something else will not happen that would cause EPA to not have to designate for primary contact recreation. Ms. Crisler noted if the commitments are not met, there is a continued vulnerability.

Commissioner Perry stated the good news is that a partnership is being worked on and EPA is agreeing to provide assistance in developing the assessment methods and to help move it forward.

Ms. Crisler noted it does appear there is a good faith commitment on the part of other state agencies to support this effort.

Ken Midkiff, Sierra Club, stated the MOU does not comply with 40 CFR Section 131.10 subsection G and read the language detailing the tests that must be met before a water body can be removed from a previous designation of whole-body-contact. He continued that the Clean Water Act clearly states waters are to be designated as whole-body-contact until a use attainability analysis has been conducted to show that the criteria have not been met. Mr. Midkiff concluded that all waters of the state must be considered whole-body-contact until a use attainability analysis determines otherwise.

Robert Brundage, Missouri Ag Industries Council, supported efforts to develop the MOU and encouraged the commission to approve it. He stated it is a common sense and good faith approach to address the issue. Mr. Brundage stated this is an opportunity to take into consideration some of the concerns of the Sierra Club and the Missouri Coalition for the Environment regarding streams that legitimately need to be designated for whole-body-contact. He noted there is opportunity to amend the MOU through letter agreement between the agencies. Mr. Brundage noted he encourages the agencies to hear the concerns of Mr. Midkiff and the Missouri Coalition for the Environment to learn where they should set priorities since the MOU does not do that. He continued that any consultation with these groups has been minimal up to now.

Ted Heisel, Missouri Coalition for the Environment, reported the coalition filed a Notice of Intent to Sue on this and other issues in July. He continued that the notice made a request to enter into discussions on how to address this problem and no response has been received. Mr. Heisel stated he is more than willing to discuss how to best address this issue. He continued that all waters were to be safe for swimming and aquatic life by 1983 per the Federal Clean Water Act. EPA notified Missouri in 1984 that this was not the case. Mr. Heisel stated the draft MOU is backwards in the way it addresses the designation for whole-body-contact. It does not impose any concrete requirements on the agencies for another six years. Mr. Heisel noted the agencies have been floundering over this issue for 20 years and he is not prepared to wait another six years under the promise in the MOU that it will happen. He stated he would be more than happy to talk to the agencies about their concerns and other ways to address this issue.

Mr. Heisel reported he did a survey of neighboring states to see if this issue was also a problem with them.

- In 1988 Arkansas designated all streams in that state with a watershed of over ten square miles for whole-body-contact
 - Not many exemptions have been sought from this designation.
 - The Mississippi River is designated for whole-body-contact by the State of Arkansas.

- In 1972 Illinois adopted this rebuttable presumption
 - There have been a number of exemptions requested from the designation; many were in small streams in agricultural areas.
 - Lists the Mississippi River as whole-body-contact with the exception of a small segment across from St. Louis in the American Bottoms.
- Indiana designated most of its streams for whole-body-contact in the 1990s
- Every mile of the 80,000 miles of streams in Kentucky was designated for primary contact recreation in 1978.
 - No exemptions have been sought from that designation. Bacteria standards must be met at the end of the discharge pipe.
- More than 95% of Oklahoma's waters are designated for primary contact recreation; this is more or less a default use and was done in the 1980s
 - Only a few use attainability analyses have been done requesting an exemption from that designation
- About 70% of Wisconsin's waters have bacteria limits; other designated uses require bacteria limits. They are now looking at designating contact recreation uses as well.
 - About 30% of Wisconsin's waters are on a variance list
 - A use attainability analysis has been done; that requirement has been in place at least 10 years.
- Only a small percentage of Iowa's streams are designated for primary contact
 - Both the Missouri and Mississippi Rivers are designated for whole-body-contact
- Not all of Nebraska's waters are designated; there is no presumption of primary contact recreation uses but all waters in high public access areas have been designated
 - The Missouri River is designated for primary contact recreation

Mr. Heisel stated the Notice of Intent to Sue pointed out 19 deficiencies so this is not the only issue of concern to the coalition. He continued that the law is clear as to what is required and he is not sure what the delay is in Missouri as most other states have taken this necessary step a long time ago.

Commissioner Minton commented if you designate every stream in the state for whole-body-contact it dilutes the significance of whole-body-contact streams because not all streams should be so designated. He asked why the process of delisting would occur if every stream is listed.

Mr. Heisel noted there will be bacteria limits in permits so that is not a question of DNR having to clean up already polluted streams. Having to make a judgement about which are the worst streams overall would be a difficult task.

Commissioner Minton asked if whole-body-contact is not taken into consideration now when permits are issued.

Mr. Heisel replied if the receiving stream is not designated for whole-body-contact it is not considered.

Mr. Schroeder responded when permits are written where domestic sewage treatment is involved, there is a technology standard on bacteria limits which is an end-of-pipe limit of 400 colonies per 100 milliliters monthly average and a daily maximum of 1,000. It doesn't consider water quality standards in the receiving stream for whole-body-contact unless there is a designated whole-body-contact use in that stream or if that facility is beyond two miles from any classified whole-body-contact use stream.

Commissioner Minton asked how much more restrictive these limitations would be if the discharge was into a whole-body-contact stream.

Mr. Schroeder replied he doesn't have any information on what the actual impacts of the technology based standards are in streams. He thought there are probably quite a few classified rivers that aren't classified as whole-body-contact use that are meeting the Water Quality Standards for whole-body-contact use and then there are some that don't. If all the streams were changed to whole-body-contact use it would not create a whole scale change in permits.

Commissioner Minton noted it appears the permitting process would be made more cumbersome or slowed down because, every time a permit came up for renewal or a new application was received, an assessment of the stream would have to be done to see if it was a whole-body-contact stream.

Mr. Schroeder replied whenever staff sees a whole-body-contact use that needs to be protected, the general reaction of staff is to require disinfection through UV or chlorination which generally achieves the whole-body-contact clean water standard.

Commissioner Minton asked if this pertains to all permits in general.

Mr. Schroeder replied if there was whole-body-contact use on all receiving streams, all those that have any kind of bacterial discharge would have to be assessed.

Commissioner Minton asked if an assessment has to be done before the permit is issued to assess whether or not it is a whole-body-contact stream.

Mr. Laux informed the commission when staff develops a permit for a new facility, if it's within two miles of a classified stream that is protected for whole-body-contact recreation, the Effluent Regulations say that you apply fecal coliform limitations in that permit of 1,000 and 400 as an average. For renewals, 1,000 and 400 would be employed. The rules include a process for not having to meet those limits by showing that the stream meets the water quality standard which is 200 in the stream. If the stream meets whole-body-contact standards and the discharge has been going out there already, whether it's classified as whole-body-contact or not, there is a way of not making the permittee disinfect when it's not needed. Mr. Laux noted what will change is that every stream will then have this presumption of protection and it will mean that for renewals staff will have to consider if the limits from the Effluent Regulations can be met.

Commissioner Minton asked how much time will be added to the permitting process if relief is requested from the conditions of the permit.

Mr. Laux replied it shouldn't add much to the staff time required because the onus will be on the permittee.

Commissioner Minton asked how much of a burden would be on the permittee if he chose to seek relief.

Mr. Laux replied there have to be a number of samples taken which takes time and effort. Individual permit actions can be slowed down for some period of time but staff continues to work on the overall effort.

Commissioner Minton asked if going to whole-body-contact affects the list of streams on the 303(d) List.

Mr. Heisel replied that will be the next issue.

Commissioner Minton questioned whether the other states would list all their streams again in the current times as they did 20 years ago.

Mr. Heisel stated his perspective is that the public health has to be protected. What sort of quandary this raises with the 303(d) List is yet to be seen. Mr. Heisel noted the 303(d) List may set off some more use attainability analyses and more people may have an incentive to try to prove that waters should not be designated.

Commissioner Perry noted she understands Mr. Heisel sees the MOU as being far from what the coalition would like to see and asked if Mr. Heisel views anything in the MOU as being counterproductive.

Mr. Heisel responded he would be more than happy to discuss different methods of approaching this problem. He stated the footnote that was subsequently changed says that the agencies don't have any responsibility to do anything referenced in the MOU.

Commissioner Perry noted if nothing is done whole-body-contact is declared for everyone and the agencies will not be held liable for not taking action.

Mr. Heisel replied there are a number of people who have watched the state do nothing for over 20 years and this is postponing this decision.

Commissioner Minton asked what the alternatives are to designating all streams for whole-body-contact so the commission knows what options are open to them.

Mr. Heisel responded he doesn't doubt that there is some creative solution that would appease the environmental groups but talks have not yet occurred. There may be a way of prioritizing which streams most directly impact the public health.

Commissioner Perry asked if that wouldn't be part of the protocol that will be developed.

Commissioner Minton stated the commission can direct staff to accommodate the concerns of the environmental groups but can't do that until those concerns are known.

Mr. Heisel responded the timeframe is one issue. The other is that the MOU says it is the agency's responsibility to do this when the reverse is true. If someone believes a stream should not be designated, they are to prove that the stream should not be designated. Mr. Heisel stated it is difficult to lay out the issues without discussing various options with the agencies.

Mr. Midkiff noted he believes it would be easier to designate all streams for whole-body-contact and then remove those for which there are widespread and significant economic and social impact. He stated the Metropolitan St. Louis Sewer District would immediately object to the Mississippi River being placed on the whole-body-contact list because they would have to spend millions of dollars to the point where people could swim in it even though they are swimming in it now. Rather than setting up a schedule to inspect a number of streams per year, there may be only a few that are having a problem. Mr. Midkiff stated removing those for which the use is not attainable would actually be easier than what is proposed.

Mr. Heisel noted he fully agrees with this.

Commissioner Hauser asked if the suit would be dropped if this MOU is approved.

Mr. Heisel noted it would not be dropped.

Commissioner Hauser asked if approving the MOU would strengthen the position in court.

Amy Randles, commission counsel, recommended discussing the legal issues during closed session so she can provide legal advice.

Mr. Heisel noted the coalition filed a Notice of Intent to Sue nine weeks ago rather than a suit and nothing has happened so he assumes the state wants to end up in court.

Commissioner Kelly asked whether the states that have designated their streams for whole-body-contact actually have cleaner streams than Missouri.

Mr. Heisel replied putting bacteria limits on permits does not indicate that their waters are cleaner with regard to those pollutants than Missouri's waters are. The big question is what do we know about water quality.

Commissioner Minton noted it sounds prudent to go the route of an MOU with EPA but at the same time he is uncertain why staff did not work with the stakeholders to find out what can be done to resolve their issues.

Ms. Crisler noted the states are in the process of switching over from fecal coliform to E. coli and as such they can designate various tiers of water so you have a higher or lower level of protection. She stated this should be considered during this discussion of use designation.

Mr. Heisel responded the switch from fecal coliform was supposed to be made many years ago also.

Ms. Shannon reported the Notice of Intent to Sue is directed to EPA, not the Department of Natural Resources.

Commissioner Hauser moved to **defer action on this item until after legal issues are discussed in closed session**; seconded by Commissioner Kelly and unanimously passed.

Closed Session

Commissioner Kelly moved to **go into closed session** at approximately 12:15 p.m. to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Perry and unanimously passed.

Open Session

Commissioner Hauser moved to **reconvene the open session** of the meeting at approximately 1:30 p.m.; seconded by Commissioner Kelly and unanimously passed.

Assessment of Waters for Whole-body-contact – Memorandum of Understanding

Commissioner Perry moved to **direct staff to proceed with finalizing a Memorandum of Understanding with EPA and the Missouri Department of Agriculture establishing a systematic approach for assessing waters for whole-body-contact recreation use designation as described in the draft Memorandum of Understanding presented to the commission September 10, 2003 and to make changes as necessary to reach consensus among the parties of that Memorandum of Understanding prior to signing, and further to meet with stakeholders within 60 days to provide recommendations with regard to the Memorandum of Understanding and to the resolution of any related issues, and to make a change on page 2, paragraph 4, of the Memorandum of Understanding: “to correct the inconsistency” should read “to correct any inconsistency;”** seconded by Commissioner Easley and unanimously passed.

Permit Efficiency Update

Phil Schroeder, Chief of the Water Pollution Control Program Permits Section, reported staff is maintaining a permit issuance rate above 100 permits every two weeks which is sufficient to address the backlog of permits that are expired as well as continuing to maintain pace with incoming applications. The average number of days to complete permit reviews are well within the required statutory timelines.

Mr. Schroeder reported the team that looked at permitting efficiencies has been nominated for a Missouri Team Quality Award. He noted Scott Totten sponsored this team and Kevin Perry from REGFORM and Judith Clark, administrative support assistant in the Permit Section, participated in the effort.

Progress Report on MOU Developed for TMDL Lawsuit Settlement

Sharon Clifford, Water Pollution Control Program TMDL Coordinator, noted TMDLs are controversial because they point out problems with monitoring and standards. A Memorandum of Understanding (MOU) was entered into with EPA at the time the TMDL lawsuit was settled by a Consent Decree in 2000. One of the requirements of the MOU is that a yearly report be presented to the Clean Water Commission. Ms. Clifford provided the following report.

1. MDNR and EPA agree to work together on waters identified in the Missouri 1998 impaired waters list, as amended and approved by EPA. MDNR and EPA shall continue to work together on waters approved for any subsequent 303(d) list.

TMDL Development Schedule

The numbers that needed to be produced each year have been met through 2002 as well as the cumulative numbers. In 2003 staff is to produce 34 TMDLs. Ms. Clifford noted all four states feel that the TMDL process and the assistance from EPA is working well.

2. MDNR agrees to develop a new TMDL Strategy Document (also referred to as Methodology Document) in advance of the 2002 303(d) list. This document shall be available to the public 120 days prior to the development of the next 303(d) list. All requirements were met during the 2002 303(d) listing process. The 2004 listing methodology will go through the rulemaking process as directed by the Clean Water Commission.
3. MDNR agrees to place on public notice a proposed list of impaired waters in accordance with section 303 of the Federal Water Pollution Control Act. That list is required by EPA to be submitted no later than April 1, 2002 or to comply with EPA regulations and timetables. EPA had changed that date for submission of the list to October 1 and that requirement was met with the 2002 303(d) List. The public comment on the 303(d) List closed on August 15. EPA plans to have the list finalized by the end of this calendar year. Most comments received regarded Hinkson Creek, Dardenne Creek, the Missouri and Mississippi Rivers, Kit Creek and Stinson Creek.
4. MDNR agrees to develop TMDLs according to the general schedule and procedures contained in the approved Strategy Document.

Counts toward Consent Decree Numbers

An approved TMDL for an individual waterbody segment
EPA approved delisting
Permit in lieu of a TMDL

Schedule of TMDLs to be Submitted to EPA as Stated in the Consent Decree

Update on TMDL Production as of August 2003:

TMDLs Currently on Public Notice:

- Kelly Branch
- Rocky Fork
 - Near Columbia and run through a state park used for ATV recreation
 - Extra sedimentation occurring due to ATVs
- Shoal Creek

Southwest Missouri

Largely an ag NPS problem with bacteria as impairment

First third-party TMDL developed and written by FAPRI

These TMDLs should be finalized as soon as the public notice period is over, comments are reviewed and they are submitted to EPA.

Draft TMDLs Submitted to EPA Region 7:

- East Fork Tebo Creek
- West Fork Tebo Creek
- Middle Fork Tebo Creek
- Tributary to Middle Fork Tebo Creek

4 waterbodies that count toward consent decree numbers

TMDL Documents Currently Being Drafted:

- Fellows Lake
- McDaniel Lake
 - Drinking water supply lakes in Springfield listed for taste and odor problems
- Jacks Fork River
 - Listed for bacteria impairment and is unique because it's a national scenic river
 - Based on antidegradation and the background conditions that exist for bacteria in the Jacks Fork River
 - The endpoint will be between 25 and 30 colonies per hundred milliliters
 - Will be based on a geometric mean

3 waterbodies that count toward consent decree numbers

TMDLs in the Modeling Process:

- Buffalo Creek (2 segments)
- Elk River
 - 11 segments and is being modeled at this time
 - Worked with EPA extensively due to the controversial nature of this TMDL in relationship to Arkansas and Oklahoma in dealing with nutrient loading
- South Indian Creek
- North Indian Creek
- Middle Indian Creek (2 segments)
- Patterson Creek
- Big Sugar Creek
- Little Sugar Creek
- Barker Creek
 - Close to the Tebos
 - Could not be completed with the other Tebos but will be completed this year

11 waterbodies that count toward consent decree numbers

2002 De-listings Approved by EPA:

- Brush Creek
- Cameron Lake
- Chariton River
- East Fork Little Blue River
- Hamilton Reservoir
- Higginsville South Lake
- LaBelle No. 12 Lake
- Long Creek
- Mulberry Creek
- Smithville Lake
- Wyaconda Lake

11 waterbodies that count toward consent decree numbers

TMDLs That Will be Developed if Not Approved for De-listing by EPA:

- Cameron Lake #1
- Cameron Lake #2

Stakeholders had information that the agency did not have and staff has again asked EPA to delist these two waterbodies

If that does not occur, the TMDL will be developed

2 waterbodies that count toward consent decree numbers

There were some conditions in the MOU for certain waterbodies that were supposed to be done this year that the agency will not meet. Staff will send a letter to EPA explaining way they were not done.

- McKenzie Creek
A pH impairment of unknown origin
- Little Sac River
Changed from point source to point and NPS

Commissioner Perry asked if this is in the same watershed that received 319 money.

Ms. Shannon responded there is an implementation project there but staff is looking to FAPRI to do the development of the TMDL. It is separate from any other project that is being funded.

- Main Ditch
The impairment is due to Poplar Bluff lagoons but it is a very unique situation because they do discharge to a ditch

Total Number of Waterbodies Being Addressed in 2003: 34

5. MDNR agrees to monitor twenty-six waters in accordance with the interim Monitoring Plan. The goal is to obtain data to determine if they are impaired.

Missouri completed the sampling that was agreed to in the MOU. EPA questioned the adequacy of that data for assessment however EPA did use this data to list 14 of the 26 waters on the current 2002 303(d) List. The final resolution is unknown at this time.

Commissioner Perry asked if this data was used to list 14 waters.

Ms. Clifford noted that is correct. There was invertebrate data which EPA did some metrics on and justified the listing based on the metrics.

6. MDNR shall provide to EPA annually by December 31, a list of waters with completed TMDLs and whether they achieved the water quality standards.

TMDL Quarterly Reports are provided to EPA and they document the schedule for TMDL development and approved TMDLs. Additional discussions have been held with Region 7 regarding those waters that have achieved water quality standards. There are not many that TMDLs have been developed for that are meeting water quality standards at this time because some of these problems will take many years to remediate. Those that have achieved this are the ones based on chlordane and chlorine issues at a treatment plant where they installed chlorine removal and the problem was solved.

7. MDNR agrees to comprehensively review the Missouri Water Quality Standards...no later than April 1, 2002, and propose changes to the MCWC.

EPA reviewed the Water Quality Standards and there was agreement to phase in the revisions. The first phase of the revisions is proceeding. The Coalition for the Environment recently filed a Notice of Intent to Sue EPA regarding their failure to get Missouri's Water Quality Standards in compliance with federal law.

8. MDNR shall develop volunteer monitoring protocols and Quality Assurance/Quality Control procedures to increase the ability of MDNR to use the data collected by volunteers.

For this level of monitoring volunteers are to be trained with agency staff on agency sample collection protocols. They must collect the samples correctly and fill out a chain-of-custody. These samples then go to the DNR lab for analyses which allows staff to put more faith in the results. Training has been provided to four individuals. The pilot project is on Hinkson Creek in Columbia. The cost and over all feasibility of expanding this program throughout the state will be evaluated. During development of the MOU which was negotiated with the Sierra Club it was agreed that no decisions would ever be based on volunteer data alone. This was largely done to protect volunteers from legal action.

9. This document reflects an understanding between MDNR and EPA. It is not intended to affect private rights and should not be so construed.

No concern regarding this MOU and “private rights” has been brought to the attention of the department or EPA.

10. The MDNR Water Pollution Control Program shall provide an annual status report regarding the progress made on each item contained in this MOU to the Missouri Clean Water Commission and the public.

This status report is provided to the commission to satisfy this condition of the MOU.

Budget and Legislative Discussion

Scott Totten, Director of the Water Protection and Soil Conservation Division, reported the department is in the last days of preparing the 2005 budget that is due to the Governor's staff October 1. There will be no expansions and there will be at least a billion dollar deficit. The remaining \$8 million of general revenue in the department is at risk. Seven FTEs remain on general revenue in the Water Pollution Control Program working on letters of approval and stormwater, rural sewer, and grant and loan administration. The Board of Fund Commissioners have decided since the state bonds for those programs are retired and interest paid from general revenue, as long as the state's budget situation remains the same, they will not sell any more bonds for those programs increasing the state's debt. Mr. Totten noted this is good from the large perspective but it's tough on the small communities that depend on these grants. Backup plans for these general revenue positions are being developed. Hiring freezes are in effect within the department so positions are available for staff to move into. The remainder of the program is on fees and federal funds.

Mr. Totten stated the 2004 budget was not kind to the department as a whole but the Water Pollution Control Program did not experience severe hits. There is a six percent governor's withholding on general revenue and several staff have left recently for other employment and others have taken early retirement. The retirement bill contains a caveat that one in four of the positions that take advantage of early retirement can be refilled. It is likely the appropriations for those positions that cannot be refilled will be reduced from the budget

which is a concern because these positions are federally and fee funded. The Public Drinking Water Program will potentially impact the Water Pollution Control Program. Five options have been discussed for implementing the public drinking water responsibilities in the state without a program director. Options include combining with the Soil and Water Conservation Program or the Water Pollution Control Program. Models looked at have separate functions but they are responsible to the same program director. The Safe Drinking Water Commission would still need support from the staff however they are organized. Separate budgets will be maintained for 2005.

Mr. Totten reported on the legislative veto session. House Bill 257 included several requirements to bring Missouri in line with the new federal CAFO rule. The bill was vetoed by the Governor and may be taken up during the veto session for possible override. A stakeholder group has begun working on the existing CAFO rule to meet the requirements of the federal rule. An Interim Committee on Water Quality Issues has been established but the objective of this group is unknown.

Mr. Hull reported the Water Pollution Control Program currently has 19 vacancies. The highest priorities are filling the section chief positions for the Financial Services and Engineering Sections.

Other, Including General Public Comment, Discussions or Issues

SWANCC Decision

Commissioner Kelly reported the Supreme Court decided that certain wetlands that were formerly protected under the Clean Water Act should no longer be protected. The EPA issued regulations to follow that ruling in January. An Advanced Notice of Proposed Rulemaking has now been published to make further changes. These changes would affect headwaters as well as isolated wetlands and some intermittent streams. Commissioner Kelly stated she thinks this would be a serious mistake as well as an encroachment on the authority of the commission and that it should be opposed. The Departments of Conservation and Natural Resources opposed this proposal in statements to EPA last February.

Ms. Shannon reported this is the court decision related to the jurisdiction of the Clean Water Act relative to isolated wetlands having to do with what constitutes a jurisdictional waterbody. Staff are concerned that the decision and the actions following that decision could reduce the ability of the states and federal government to protect certain waters. The department did oppose this proposal and provided information on what the potential impacts of any weakening of the Clean Water Act would be.

Commissioner Minton asked that the commission members be provided a copy of the department's comments to EPA and that staff provide a briefing at the October meeting.

401 Issues

Commissioner Minton asked about the status of the 401 rulemaking.

Ms. Shannon replied a strategy for holding stakeholder meetings for the aquatic mitigation guidelines has been developed. A schedule is being developed for proposing changes to address public hearings and so forth. A request was submitted to the COE in early June to consider the conditions for the 401 nationwide permits.

Commissioner Minton asked if there has been any preliminary feedback on this issue.

Ms. Shannon replied staff has heard informally that the Kansas City COE is in support of adopting these conditions.

319 Projects

Commissioner Perry asked about the status of the actual dollars for the 319 projects.

Ms. Shannon responded staff has submitted the first phase of a grant application to EPA that included the nine projects that the commission approved to go forward along with base level funding for staff while working on the next edition of the grant application. Staff is still working on numbers for the complete grant application.

Commissioner Perry asked when staff expects to hear from EPA regarding the grant application.

Ms. Shannon replied that the EPA coordinator has not yet received the grant application from EPA's Grants Administration staff. She continued she expects it will be at least three months before a formal action can be anticipated.

Responding to Commissioner Perry's question, Ms. Shannon stated staff figures nine months to a year from the time staff submits the application to the time the money is in the hands of the project applicant.

Commissioner Perry asked about the money for staff.

Ms. Shannon responded that money is available somewhat sooner; possibly around three months. She continued that there is some cushion room from previous grants. Ms. Shannon noted draft guidance has been received from EPA for next year's 319 projects. Staff would typically have already sent out a Request for Proposals. This has not yet been done as staff is waiting on final guidance from EPA. Ms. Shannon explained that staff anticipates discussing this with the commission when it is received.

Mr. Hull noted staff would like to get the commission's comments on the Request for Proposals and how to prioritize the projects.

Ms. Shannon informed the commission notice has been received that the Senate committee looking at the 319 budget is proposing a reduction in 319 dollars for FY 04. The reason behind this is their belief that there are other sources of funding addressing the needs of nonpoint source, particularly in the agriculture area. The cut is \$45.2 million nationwide which would mean at least a half million dollar reduction in Missouri.

Section 640.035

Commissioner Perry referenced Section 640.035 relating to maintaining records of compliance with statutes and asked how it's being implemented and how we make people aware of this option. She asked that information on this section of the statutes be provided at the October commission meeting.

Communication with the Commission

Commissioner Minton reported he and Chairman Herrmann, along with most of the other Chairmen and Vice Chairmen of the various DNR commissions, attended a meeting relating to concerns of industry, environmental groups, and the general public about responsiveness to issues. He stated that everyone tried to make it clear to those that had concerns that the commission meetings are a forum to bring concerns and complaints to the commissions. Commissioner Minton stated the public needs to bring issues to the commissions so they can be addressed in a formal setting. He continued that he looks forward to and expects a follow up to issues and wants the public to know that if the commission is negligent in any aspect of its duties, the commission wants to correct that. Commissioner Minton concluded that the commission will try to address any concerns that the general public has realizing that the commission must at all costs protect the waters of the state.

Pebble Creek / Duncan's Point

Ms. Brunson informed the commission she is present today speaking on behalf of Duncan's Point, one of the oldest resorts on the Lake of the Ozarks, and reported that a developer from Johnson County, Kansas has purchased 38 acres in the resort. When the developer began to disturb the land, a complaint was made to the Department of Natural Resources (DNR). The department corresponded with the developer in January 2002. Ms. Brunson stated land clearing continued and residents continually complained to DNR. The developer then applied for a construction permit for a wastewater treatment facility near the resort's historic road. Ms. Brunson complained that the application contained deficiencies and was renoticed five times and proper notification was not given to the residents of Duncan's Point. She

continued that the residents have not received an engineering report or environmental impact reports and questions why they cannot get information on the possible expansion of his facility.

Ms. Brunson stated they have filed over 12 complaints with DNR and have not gotten a satisfactory response regarding use of the waste treatment system that the developer does not have a permit for. She continued that there seems to be a consistent pattern of disregard for regulations and a problem with DNR enforcement. She asked how the subdivision regulation applies to this development and why the department isn't looking into this. Ms. Brunson explained the residents have filed several federal complaints and are asking for the state to consider the cultural resources and the environmental impacts to the area.

Ms. Brunson explained the wastewater treatment plant is an open sand filtration system which appears to set within 10-15 feet of the only entrance and exit road to Duncan's Point which will cause a public nuisance. Residents also fish in this particular cove. Ms. Brunson provided pictures taken of the area in May 2002.

Ms. Brunson provided a copy of a petition to vacate the historic road that requires signatures of 12 people in the community who are not related. She noted the similarity of the names on the list and stated none of these people live in the Duncan's Point community.

Ms. Brunson noted residents are concerned about fires being set in the area and have complained to DNR numerous times about the developer. DNR responded that a person has the right to burn as long as it wasn't construction material and it is 200 feet away. Ms. Brunson noted this community is isolated and two homes have burned and the residents are being intimidated as these fires are being left unattended. She stated DNR has been asked to consider the requests of the residents and issue a Notice of Violation for the burning.

Commissioner Minton noted the commission has referred similar matters to the Attorney General and asked staff if a Notice of Violation has been issued for any violations in this development.

Mr. Hull replied he believes a Letter of Warning was sent regarding the open burning. The developer was told that he cannot burn construction or trade waste. Mr. Hull stated he has not heard anything regarding homes that have burned.

Commissioner Minton asked if the developer is required to obtain a land disturbance permit.

Mr. Hull noted it depends on the amount of land being disturbed.

Commissioner Minton noted it appears from the photos that Ms. Brunson has a legitimate concern and asked if a follow up inspection with a presentation at the next commission meeting would be warranted. He noted a more extensive investigation of the situation seems appropriate since it appears there are valid concerns.

Mr. Hull noted he was at the site some time ago but it did not look anything like the photos.

Ms. Brunson stated there is still a lot of sedimentation where the land is being cleared and the road looks essentially the same. She noted there are huge culverts on the side of the road, a wetland area has been covered up, and the sediment is damaging the entrance and exit to the resort.

Residents requested a public hearing which was held on May 15. Ms. Brunson stated residents did not receive a hearing notice in a timely manner as required by regulation. She explained that the notice was posted in the Sun Leader in Camdenton and did not allow for the required 30 days notice. Ms. Brunson stated the residents did not receive a notice for this particular hearing. She continued that DNR knew there was going to be an availability session prior to the hearing but provided no information at the session. Ms. Brunson stated the engineer from the department told residents that this particular project is similar to other systems and they meet the requirements so this project should too.

Ms. Brunson noted reading through the minutes of past commission meetings she found that it takes 3-4 years to bring those in noncompliance back into compliance. She asked that the commission enforce the regulations and present the residents with the appropriate information. Ms. Brunson stated this community joins six other communities and everyone enjoys this particular cove.

Mr. Hull stated there are a variety of issues from whether or not an environmental impact statement is required for this type of project, 106 review of permit action, land disturbance issues, to 404/401 issues. He explained staff went through extensive notification regarding the public hearing. The location was changed several times trying to make it more convenient for people in the Kansas City area that own property at this resort. Mr. Hull noted he would like the opportunity to respond to the commission at the October meeting after a site visit is conducted.

Ms. Brunson stated three homes have been built to date and a sea wall is partially in place. She continued that there are enough discrepancies to glean that there are some violations. She asked why the information wasn't provided at the availability session for the residents. Ms. Brunson complained information had to be obtained from the DNR records in Jefferson City because they are not being informed of what is going on. She asked for a 106 review of the wastewater treatment plant because this is a historic resort.

Commissioner Perry asked if the resort has been certified as a historic property.

Ms. Brunson replied the resort has been declared eligible for historic status and they are working to finalize this.

Commissioner Minton asked that staff visit the site, provide an update at the October meeting, and work with the residents to see if an amicable resolution can be reached.

Commissioner Perry asked if Duncan's Point has legal representation.

Ms. Brunson replied they do.

303(d) List

Mr. Hull reported that staff received a copy of a comment letter that was sent to EPA during the comment period by Limnotech which John Ford agrees with. The comment letter stated that the Blue River should not be listed for benzo(a)pyrene based on the data in a USGS report. The estimated actual amounts in the stream were not in exceedance of the state Water Quality Standards. This correction was made after the comments were submitted to EPA.

Ms. Shannon noted staff realized they had made an error and acknowledged this error to EPA.

LEGAL MATTERS

Appeal 383-03 MoDOT 401 Water Quality Certification

The Administrative Hearing Commission recommended dismissal of this appeal following execution of a Settlement Agreement in July 2003. Ms. Randles informed the commission that the parties had reached a settlement under which a voluntary dismissal was filed and a revised certification was issued.

Commissioner Perry moved to **approve the dismissal with prejudice of Appeal 383-03 MoDOT Water Quality Certification**; seconded by Commissioner Kelly and unanimously passed.

Appeal 379 AK Steel Corporation

The Administrative Hearing Commission recommended dismissal of this appeal following filing of a Motion for Voluntary Dismissal by appellant.

Commissioner Perry moved to **approve dismissal of Appeal 379 AK Steel Corporation**; seconded by Commissioner Easley and unanimously passed.

Other

The next commission meeting is scheduled for October 22 at the Lake of the Ozarks. Mr. Hull noted the December meeting may be a joint meeting with the Hazardous Waste Commission. Staff is also working on a joint meeting with the Air Conservation Commission sometime in 2004.

Commissioner Minton asked if the December meeting could be moved closer to the date of the hearing on the St. John's Bayou/New Madrid Floodway appeal.

MOU Between EPA/MDA/DNR

Commissioner Perry asked that staff update the commission monthly on this subject.

INFORMATIONAL SESSION

Watershed Report – Upper Cedar Creek in Boone County

Ms. Shannon introduced Stuart Miller of the Land Reclamation Program who has been integral in restoring water quality in Upper Cedar Creek in Boone County. She explained this project received 319 funding and funding for surface mine reclamation from the Office of Surface Mining.

Mr. Miller informed the commission he works for the Abandoned Mine Unit of the Land Reclamation Program that has been addressing abandoned mine land problems throughout Missouri for over 20 years. He reported that the Office of Surface Mining and the US Department of the Interior limit funding to dealing primarily with human health and safety issues rather than environmental.

Mr. Miller noted Cedar Creek was one of the major environmental problems in the state related to acid mine drainage. Numerous fish kills occurred from 1948 to 1979 with mining occurring from 1948 to the early 60s. In 1979 the Forest Service purchased land in the area and declared 14 miles of Cedar Creek permanently lifeless. Cedar Creek was placed on the 303(d) List for low pH and high sulfates. From 1981 to 1990 three sites were reclaimed at a cost of \$4.7 million using the Office of Surface Mining Abandoned Mine Land funds. Of the 2,000 acres, 700 were reclaimed and vegetated and no more fish kills occurred.

Flooding that occurred during the 90s caused significant damage. The 319 clean streams project tried to address some of the stream bank damage and some of the remaining acid mine drainage problems. Mr. Miller stated the intent of the project was to reduce acid mine drainage, total dissolved iron content and sulfates, repair some of the flood damage and stabilize the eroding stream banks that were causing much of the water quality problems after the reclamation was completed, restore the aquatic ecosystem, and plant native species to help restore the ecosystem.

Mr. Miller reported this site is on private land so the landowners were worked with closely as well as the Office of Surface Mining which provided the bulk of the funds. The US Geological Survey is in the process of completing a biological recovery of Cedar Creek following the reclamation. EPA, Natural Resource Conservation Service, Department of

Conservation, Department of Natural Resources, Boone County Soil and Water Conservation District, and the Columbia Audubon Society all contributed.

Six passive treatment wetlands were constructed in tributaries to the creek to treat the acid mine drainage and sulfates. Over 66 acres of native grasses were planted in some of the worst areas and over 200,000 trees have been planted to date. Mr. Miller reported that the wetlands were built in 2000-2002 and the acidity has been neutralized, the alkalinity has been increased, the iron content is being reduced, and the sulfate is slightly reduced. He noted it is difficult to pull the sulfate out of the system once it has been introduced. The aquatic ecosystem is recovering as well. Total cost of the 319 project was \$354,000 with \$150,000 provided by the 319 program. Mr. Miller noted the wildlife populations are on the rise and the native systems are continuously improving.

Commissioner Perry asked if the area beyond the wetlands is strictly in native grasses.

Mr. Miller replied 66 of the 400 acres have been planted to native grasses. The majority is a combination of cool season. A lot of native plants moved in without planting. Trees have been planted in most of these areas.

Commissioner Perry noted she is looking for another economic advantage such as a hunting site or an acid loving plant such as blueberries.

Mr. Miller responded that people have discussed this. The landowners are absentee and use the land for fishing and hunting.

Commissioner Perry asked if they are being limited in the land use.

Mr. Miller replied it is their property and they are helping staff by allowing them to do the work.

Responding to Commissioner Perry's question, Mr. Miller noted the hope is that over time the organic matter content will increase so that the site will be stable. If the site is disturbed so that the material is reexposed it could start the cycle all over again.

Commissioner Perry asked if this is recorded on the property deed so that future owners will know that this has been done.

Mr. Miller replied typically the Land Reclamation Program has been more concerned about encouraging land owners to work with staff rather than possibly antagonizing some landowners.

There being no further business to come before the commission, Commissioner Hauser moved to **adjourn the September 10, 2003 meeting**; seconded by Commissioner Kelly and unanimously passed.

Respectfully submitted,

Jim Hull
Director of Staff